THE HONOURABLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION No. 8615 of 1998

DATED: 25-04-2007

Between:

B.Bal Reddy

…Petitioner

and

The Managing Director, APSRTC.,
Musheerabad, Hyderabad and others

…Respondents

THE HONOURABLE SRI JUSTICE GODA RAGHURAM

W.P.No. 8615 of 1998

Oral order:

The petitioner was appointed as a Conductor on 25-12-1990 in the APSRTC. On 5-10-1994 he was issued with a charge memo setting out two charges; (a) for having absented from duties unauthorisedly from 6-7-2994 to 12-7-1994 without obtaining prior sanction of leave from the competent authority which constitutes misconduct in terms of Regulation 28 (xxvii) of APSRTC Employees (Conduct) Regulation, 1963; and (b) for absenting to duties by 60 days and 147 days after sanction of 12 days leave and thereby causing dislocation of service and inconvenience to the travelling public besides loss of revenue to the corporation which is the misconduct under Regulation 28 (ix) B and (xxvii) of the Regulations.

Though the petitioner received the charge memo, he did not submit his explanation. Eventually, by the order dated 12-4-1995 of the 3rd respondent, the petitioner was imposed the penalty of deferment of annual increments for a period of two years which shall have the effect on the future increments. The 3rd respondent recorded in this order that since the petitioner failed to submit explanation, it is inferred that he has admitted the charges.

Aggrieved by the above disciplinary order of the 3rd respondent, the petitioner preferred an appeal on 21-9-1995 to the Regional Manager. By the order dated 15-4-1996, the 2nd respondent appellate authority found that during the period from 6-7-1994 to 12-7-1994 the petitioner was indeed sick and admitted in Tarnaka Hospital and

therefore, charge No.1 was not proved. In respect of charge No.2, the appellate authority recorded that the attendance of the employee from 1-1-1993 to 12-7-1994 is not satisfactory; he is a regular absconder for duties and on an average he reported private sick or absented for duty for more than 3 days in a month and therefore, the punishment imposed by the 3rd respondent was justified. The appeal was accordingly rejected.

The petitioner contends that the imposition of the penalty of stoppage of increments with cumulative effect is a major penalty and requires the following of major disciplinary procedure i.e., conducting of a regular enquiry and no enquiry whatsoever was conducted, only a charge memo was issued, explanation called for and the impugned order was passed.

The learned counsel for the petitioner would also contend that the primary order of the 3rd respondent is perverse, as the failure to submit an explanation could legitimately lead to an inference of admission of guilt. Silence can never be an admission of guilt, is the argument.

In respect of the claim that punishment of stoppage of increments with cumulative effect is a major penalty and requires the guilt to be established in a regular enquiry, reliance is placed on a decision of the Supreme Court in ***Kulwant Singh Gill v State of Punjab***[1].

In the counter-affidavit by the Law Officer of the Corporation while reiterating the allegations against the petitioner, it is pleaded that the punishment of deferment of increments for two years with cumulative effect is a minor penalty.

In view of the decision in ***Kulwant Singh*** (supra), the contention of the respondents on the imposition of the penalty and the validity of the punishment imposed without regular enquiry, is misconceived. The writ petitioner is entitled to succeed.

The writ petition is accordingly allowed as prayed for. There

shall be no order as to costs.

GODA RAGHURAM, J

25-04-2007
GRR

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[1] 1991 Supp (1) SCC 504